

the hapless community unit which happened to have warehouse space. In truth, the only sensible way for measuring equipment cost is on the regional basis by which equipment is managed. The Form promises (Part III, Box G) that such costs might be aggregated and then allocated in some reasonable manner, but it does not deliver on the promise. Instructions in Worksheets 1 and 2 require starting revenues to be measured by the accidental snapshot of equipment penetration and tier penetration on September 30, 1992 and the initial date of regulation. Ending prices will always reflect the slight variations in penetration captured on the arbitrary day of measurement. This assures that even if costs are averaged, the worksheets will still produce a crazy quilt of varying rates across integrated community units.

Requiring cable operators to calculate prices on a community unit basis will frustrate marketing efforts because prices among individual franchise areas of the same integrated system will always have slightly different weighted average channel prices due to the incidental variances of tier and equipment penetration factors that will exist at the time Form 393 is completed for any

realistic prices without artificially gerrymandering marketing and imposing needless administrative costs.^{19/}

Community unit based pricing will also substantially raise the administrative cost of rate regulation to both the cable industry and the agencies reviewing the Form 393. There are approximately 30,000 community units nationally, but only 8,000 systems subject to regulation. Continental alone serves 600 community units. If integrated units with identical channel lineups and service offerings could be merged for rate regulation purposes, Continental could reduce this number to 65 accounting centers. The economies and efficiencies associated with system or accounting unit based pricing clearly outweigh the inevitable marginal price differences that will result from community unit based pricing.

^{19/} The resulting averaged costs would be distributed across multiple franchise areas using the subscriber weighting count contemplated by the Commission. This cost averaging would not change either the number of Form 393 rate worksheets that the operator must ultimately file or alter the benchmark rate ceiling for the specific franchise area or community unit. The cost calculation would still be verifiable by examining the operators' books, although the cost information might be aggregated at a higher accounting level.

IX. PART-TIME CARRIAGE ON LEASED ACCESS

A. Rates, Terms And Conditions For Partial Lease Of Channels

The Commission suggests that commercial use must be afforded to part-time users "in a reasonable manner" "at any time of day, up to and including the full program day, subject to the needs of other leased access providers." R&O at n.1283. It later suggests that such part-time use "can be calculated by prorating the monthly maximum." R&O at ¶518. Unfortunately, these vague instructions invite abuse of leased access. Most systems today are fully loaded, and must displace existing channels to accommodate leased access time. An infomercial provider could easily demand access to six channels for one hour apiece in prime time, displacing existing cable networks and potential full-time users of leased channels. Any part-time user might also claim that the maximum charge is the prorated maximum full-time charge, even for prime time. Using the Commission's 50 cent/sub example, R&O at n.1312, one hour on a 10,000 subscriber system would cost \$6.94, and a 60 second prime time spot would cost less than 12 cents. Something is drastically wrong.

In the first place, the Commission should clarify that cable operators are not required to make a specific time available to a lessee if it would require use of an additional designated leased access channel, so long as time remains on a designated channel already used for commercial leasing. Once one channel was filled in this fashion, a second designated channel would then be made available, and so on.

Alternatively, the Commission should not require cable operators to lease less than an entire channel at a time. The unique resource of cable is its channel capacity. For entities seeking access to limited programming time, such time is readily available elsewhere; infomercials appear regularly in smaller segments (30 minutes - 2 hours) on commercial broadcast television. By restricting mandatory commercial leased access to those seeking to program an entire channel, the Commission would conserve this valuable resource for programmers needing a full channel.

If the Commission does not limit commercial leased access to those seeking to program an entire channel as proposed above, then it is critical that the pricing formula for partial channel use be refined. Different time periods during the day or week have very different economic values, based upon the number of viewers in the audience.^{20/} By averaging the value of leased access time, prime time hours will be grossly underpriced, while the majority of time available on any given channel will be overpriced. By allowing cable operators to deaverage lease rates, subject to a maximum overall full-time rate over any 24 hour period, access to less popular times could be made available at significantly lower rates. Cable operators should be given discretion to establish reasonable rates for different day parts during a week to reflect

^{20/} The Commission already acknowledged that "[t]he value of a channel would logically vary significantly based on the subscriber base it accessed". R&O at n. 1282. The identical principle applies to the value of channel time during different parts of the day or week.

the relative value of channel time and the costs associated with less than full-time leases. In any event, it is critical that the Commission distinguish between channel leases and advertising. If it does not, the Commission's rules threaten to undermine the still developing local cable advertising business.

B. Maximum "Home Shopping" Rates

It is not clear to some shopping channels how the implicit net fee is calculated for the home shopping service and infomercial category.

The Commission should clarify that, as with the other leased access categories, for the "shopping" category the cable operator should first determine the actual monthly per subscriber revenue for nonaffiliated shopping services based upon the previous calendar year. The cable operator would then add to that figure the per channel charge that individual subscribers pay to receive the level of service on which the service is available. The total would constitute the implicit net fee received by the cable operator for carriage of that particular shopping service. Thus, the implicit net fee for an unaffiliated shopping service carried on a \$10 20-channel basic that generated \$.50 cents per subscriber per month in sales commissions would be \$1 per system subscriber. The highest such fee in the category would establish the maximum charge.

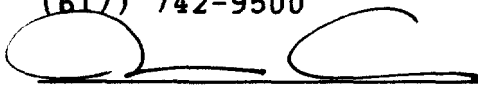
X. CONCLUSION

Continental respectfully requests that the Commission reconsider the R&O and modify its rate regulations in accordance with the foregoing Petition.

Respectfully submitted,

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Robert J. Sachs
CONTINENTAL CABLEVISION, INC.
The Pilot House
Lewis Wharf
Boston, Massachusetts 02110
(617) 742-9500



Paul Glist
James F. Ireland
Robert G. Scott, Jr.
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

June 21, 1993

EXHIBIT A
FEDERAL COMMUNICATIONS COMMISSION
Docket No. MM 92-266

Case Study Of Why
Multiple Subscriber Properties Often Require
Customized Pricing

Environ Towers II Condominium Association, Inc.

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DEC 22 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

7300 Radice Court
Lauderhill, Florida 33319

ORIGINAL
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DEC 21 1992

FCC MAIL ROOM

December 15, 1992

ORIGINAL
FILE

Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Cable Rate Regulation-MM Docket 92-266
Cable Customer Service-MM Docket 92-263

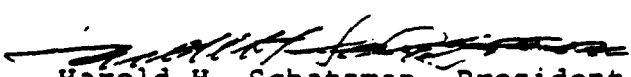
Gentlemen:

We have just negotiated a new contract with Continental Cablevision for our condominium for basic cable. The rates have increased over 75% and, after much investigation, we are obliged to use Continental Cable at these exorbitant rates as they have a monopoly on the area as well as a franchise with the City of Lauderdale which runs until 1999 with options to renew.

Regulations are necessary in this industry and we urge the FCC to consider these exorbitant rates and do something about it.

Thank you.

ENVIRON TOWERS II CONDO ASSOC.


Harold H. Schatzman, President
FOR THE BOARD OF DIRECTORS

HHS:dgj

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List A B C D E



Continental Cablevision of Broward County

January 25, 1993

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: Environ Towers II Condominium Association letter dated
December 15, 1992 regarding Cable Television Rulemaking
Proceedings MM Dockets 92-263 & 92-266

Dear Sir or Madam:

This letter is to respond to the issues raised by the Environ Towers II Condominium Association in their letter to you. In order to fully understand the situation, some background information is required.

The Association entered into a promotional service agreement with our predecessor, American Cablesystems of Florida, in July, 1987 for 34 channels of service. We provide them with 45 different channels under the agreement. This promotional agreement also provided the Association with low rates for a period of several years. Due to the increase in both the amount of cost of programming, along with the increase in the cost to operate the system and provide high quality service to the residents, it now costs us more than we receive to provide service to the Association. We have let the initial promotional term run its course, however, we are not offering to extend the same unprofitable rates.

The Association has been receiving a discount of approximately 70% off our regular retail rates. The agreement specifically states that at the expiration of the initial promotional term, the Association can either renew the agreement at our then prevailing bulk rates or allow the individual residents the option to purchase service at regular retail prices, disconnect or reduce their service to a lower priced option. The language of the agreement is very specific. Both parties entered into the agreements with the full knowledge that the promotional rates would someday expire.

In order to fully understand this situation, some additional facts are required. The 45 programming channels the Association receives are comprised of two levels of service. Our Lifeline Service offers 21 channels of off-air stations, superstations, PEG channels and C-Span. while our Satellite Service provides an additional 24

Federal Communications Commission
January 25, 1993
Page 2

package, which is priced at \$23.85 per month plus tax. Additional outlets including both tiers of service are \$5.50 per month plus tax. The price under the Association's promotional agreement is only \$8.58 per month plus tax for each unit for the Total TV package on two outlets.

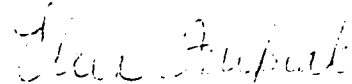
We fully understand the Association's concern regarding the change in rates. It is our opinion that it would be too large an increase for the residents to absorb to go from the below cost rates they have been enjoying to either the prevailing bulk rate or regular retail rates. The Association was interested in pursuing a new bulk service agreement, therefore, we proposed phasing in the increase to prevailing bulk rates over a five year period.

Our prevailing bulk service rate was established by determining the operational savings obtained by providing service on a bulk basis. The savings come in two areas. First, billing and collection costs decrease, since we mail fewer statements and the association collects from the residents. Second, since many residents are here for only part of the year, we eliminate the cost of sending a technician out twice; to disconnect service when a resident leaves and then reconnect them upon their return. This two areas allow us to pass on a savings or discount of 25%.

The three year transition we proposed to the Association provides them with a 50% discount in year one, a 40% discount in years two and three, a 30% discount in years four and five, and a 25% discount in years six and seven. We believe that this proposal meets the needs of both parties by allowing the Association to phase in the rate adjustment to prevailing bulk rates over several years. At the same time, it allows the company an opportunity to begin covering its operating costs, and, over the course of time, recoup our losses and earn a fair and reasonable return on our investment.

I will be happy to provide you with any additional information regarding either this Association or other bulk accounts in Broward County.

Sincerely,



Ellen Filipiak
Vice President and District Manager

EXHIBIT B
FEDERAL COMMUNICATIONS COMMISSION
Docket No. MM 92-266

Draft Rate Card For
Continental Cablevision Of Greater Dayton
(Using Current Rates And Reflecting Differences
In Franchise Fee Percentages And "Gross Revenues"
Subject To Fee In System Communities)

CONTINENTAL CARLEVISION OF GREATER DAYTON